



STATE OF WASHINGTON
GAMBLING COMMISSION

"Protecting the Public by Ensuring that Gambling is Legal and Honest"

September 29, 2006

Chairman Phil Hogen
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington DC 20005

Dear Chairman Hogen:

SUBJECT: COMMENTS ON CLASS II PROPOSED REGULATIONS

On behalf of the Washington State Gambling Commission, I would like to summarize our final input regarding the Class II machine rules proposed by the National Indian Gaming Commission.

Thank you for the invitation and for hearing my testimony on September 19, 2006, I have attached that document and Director Day's previous letter dated August 22, 2006 for your records. My comments during the panel testimony related to our regulatory concerns and view of the broader picture regarding the proposed regulations and associated issues.

We would summarize that the game of bingo is not:

- o Single player
- o A "one touch" game to complete the cycle
- o Spinning reels (i.e., slot machine fruit)
- o A game that bears no resemblance to bingo
- o A facsimile of bingo

The game of bingo:

- o Is a real time game
- o Is played by multiple players
- o Is player inter-active
- o Is played with bingo cards, balls, and prizes
- o Looks like bingo to a player
- o Is won when the first players covers a predetermined pattern
- o Provides prizes to the winning player

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While we support the steps the NIGC is taking to identify and define Class II games, we are not in agreement that these rules have gone far enough to be effectively implemented. The WSGC has experienced many years regulating bingo. We are greatly concerned that less than adequate rules will, by regulation, allow machines that we believe to be precluded by IGRA into Class II environments. Many of these machines, that are not bingo by their very nature, are Class III and therefore required to be the subject of Tribal -- State compact negotiations. We reserve the right under IGRA, as a state, to negotiate these items.

Again, I appreciated the opportunity to participate in your September 19 meeting. If you have any further questions regarding the position of the Washington State Gambling Commission, please do not hesitate to contact me or our Director Rick Day at (360) 486-3452.

Respectfully,



Sharon M. Reese
Deputy Director

Enclosures

cc: Rick Day, Director, WSGC
John Lane, Executive Policy Advisor Governor's Office
Jenny Ackerman, Senior Counsel, Attorney General's Office

TESTIMONY - NIGC HEARING
September 19, 2006
Washington DC

Presented By:

Sharon M. Reese, Deputy Director
Washington State Gambling Commission

Chairman Hogan, Associate Commissioner Choney, Commission Staff,
Honored Tribal and State Representatives, Ladies and Gentlemen:

Thank you for the opportunity to testify on behalf of the state of Washington regarding proposed rules for Class II electronic devices. My name is Sharon Reese, I am the Deputy Director of the Washington State Gambling Commission (WSGC).

The WSGC has been the negotiator on behalf of the Governor for Class III compacts with tribal governments in the state of Washington for the past fifteen years. Twenty-nine, unique, federally recognized Tribes are within Washington boundaries and there are twenty-seven compacts with twenty-four operations open for business. Recent counts indicate 16,281 total Class III machines and 1,093 Class II machines.

Our interest in being here today is to provide a state perspective regarding rules for Class II and III machine gaming and our thoughts regarding the challenges facing us all in the coming months.

We are confident it was not the intent of the drafters of IGRA, or the current wish of the NIGC, in the promulgation of rules, to allow misrepresentation of games or submit to language distortions that effectively blur the distinctions between Class II and III machines. To do so precludes effective tribal, state, and federal regulation and subsequently undermines public confidence which can be damaging to business.

The Commission must continue to show that it is willing to enforce those provisions provided by IGRA with rules that reinforce a bright-line standard for both regulatory staff and tribal business leaders in differentiating between Class II and III devices. Those machines not meeting the specific

requirements under IGRA's definition and the Commissions clarifying rules should be required to be removed or request to be negotiated under the terms of a Class III compact. IGRA provided clear recognition of both the tribes' and states' rights to negotiate these higher risk and more profitable types of activities.

No-one disputes that the income from tribal gaming has provided some phenomenal programs and improvements in Indian Country. In Washington, there is tremendous pride in the employment, educational, health, social programs and much more that Tribal governments have prioritized with the funds from gaming enterprises. Local communities in the surrounding areas have also flourished and benefited from additional employment, associated money circle of spending.

The NIGC rules separating and identifying Class II from Class III machines are something that the states have a strong interest in. It has been a concern in our state that even though we all know these rules were coming, it appears that purchases of "gray area" machines continued even when the draft regs. were already being prepared to be posted. Some enterprises may have been premature and now they must potentially re-evaluate their economic plans. But, there is still a very positive future for tribal gaming with appropriate NIGC rules, oversight and TGA regulation in Class II. Over time adjustments will continue to be made to accommodate changes in the law, technology, the industry and approaches to regulation. But for now, we are at this point in time with this set of circumstances, many of us doing the best we can in our own environment to maintain integrity and confidence.

The WSGC has been a nationally respected gambling regulatory agency since 1974 and worked closely with colleagues at the NIGC during its early development and has observed its growth over recent years. A regulator's role, however difficult, is to provide simple clarity to their administrative regulations in support of the authorizing law.

To summarize:

- We believe that strong regulation and control, accompanied by fairness and consistency in the implementation of rules and regulations is critical to the success of gambling regulatory agencies.

- o These rules make some progress, but do not fully support IGRA's guiding principles in strictly defining the Classes of gaming on Indian lands. They may not have gone far enough and they lack the simplicity needed for effective regulation. The NIGC may find itself spending a great deal of time interpreting its regulations as a result.
- o The Commission may have significant difficulty fully enforcing these provisions as proposed and needs appropriate resource staffing and budget support to be effective and engender confidence in this complex environment.

In Washington State the Tribal Gaming Agencies work diligently to maintain an independent regulatory oversight of gambling activities. Our government to government relationships continue to improve over the years of working together, sharing common goals in the Class III environment through our tribal-state compacts.

Without agencies to make the tough and sometimes unpopular decisions, there is much more risk to the industry as a whole associated with those who take advantage of unclear regulation, lack of adequate or knowledgeable enforcement or outright illegal activities. Working together the business enterprise and the regulator may not always see eye to eye, but there are some basic values, I'm happy to say, most of us aren't compromising on.

On behalf of our Commissioners at the Washington State Gambling Commission, Director Day and our staff, thank you for the opportunity to be here. As regulators, whether you are tribal, state or federal we can all appreciate that there are inherent difficulties in maintaining independence and a balance between public, private and government interests in the area of gambling.



STATE OF WASHINGTON

GAMBLING COMMISSION

"Protect the Public by Ensuring that Gambling is Legal and Honest"

August 22, 2006

Penny Coleman, Acting General Counsel
National Indian Gaming Commission
1441 L Street NW, Suite 9100
Washington, DC 20005

Dear Ms. Coleman:

**SUBJECT: COMMENTS ON ELECTRONIC OR ELECTROMECHANICAL
FACSIMILE DEFINITION**

The Washington State Gambling Commission appreciates the opportunity to comment on the May 25, 2006 draft of proposed rules pertaining to Class II electronic devices. We acknowledge and respect Tribal and the National Indian Gaming Commission (NIGC) jurisdiction relative to Class II gambling. However, as the State Gaming Agency, we do have an interest in ensuring electronic gaming devices referred to as Class II are not merely a guise for what is actually a Class III gambling device.

Under the proposed rules, you identified three criteria outlined in the Indian Gaming Regulatory Act (IGRA) that make up the game of chance commonly known as Bingo:

1. The game is played for prizes, including monetary prizes, with cards bearing numbers or other designations;
2. The holder of the card covers such numbers or other designations when objects, similarly numbered or designated, are drawn or electronically determined; and
3. The game is won by the first person covering a previously designated arrangement of numbers or designation on such cards.

We appreciate the NIGC conclusions that at least half the screen must be a Bingo card. We also agree with the NIGC requirements to "draw the balls" when the game is played rather than before, and we agree to the NIGC described pull-tab classification criteria.

However, we must ask why anything but a bingo card should be displayed. We find no court case or decisions that conclude that any other graphic display would be considered a "technological aid" to playing bingo. Mechanical reels or similar displays only confuse the player and do not "aid" Bingo. The clear intent of the "technological aid" provision would be to facilitate play or allow other players to participate, not to change the appearance of what is being

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Penny Coleman, Acting General Counsel
National Indian Gaming Commission
August 22, 2006
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played. IGRA specifically states that Class II gaming does not include electronic or electromechanical facsimiles of any game of chance or slot machines of any kind. We propose that any display that appears to the players as anything but bingo misrepresents the game and does not comply with IGRA.

NIGC technical standards do not include specifications that could record the proper information from all terminals in play between distant locations. As a result, the NIGC provision allowing multiple casinos to be linked for the same bingo game makes it technologically impossible to ensure that the game is won by the first person covering a previously designated pattern on a card.

Finally, the NIGC provision to require players to pay additional money (ante-up) in order to remain in a bingo game does not allow the player to win the first prize. The player purchased a card to participate in the game that is played for prizes. The NIGC has already correctly determined that there must be more than one drawing to determine a winner. Yet, no one person can win on the first drawing, which would make it impossible for a game to be played for a prize.

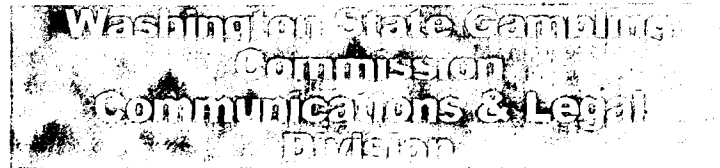
Washington remains among the states firmly committed to strong partnerships with tribal governments engaged in Class III gaming. Thank you again for this opportunity to comment.

Sincerely,

Rick Dey
Director

cc: John Lane, Executive Policy Advisor, Governor's Office
Jerry Ackerman, Senior Counsel, Attorney General's Office

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11/2/06

To: NIGC Chair Hogen From: WSEC G. Reese
Re: 202 632-7046 Pages: 7 + Cover
Phone: 202 632-7003 Date: 09-29-06
Re: Class II Regs
☒ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply ☐ Please Respond

11/2/06